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Dong-A Daily North America, Inc. and Korean Immigrant Workers Advocates. Case 31-CA-24127

June 27, 2002

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS LIEBMAN, COWEN, AND BARTLETT

The General Counsel in this case seeks summary judgment on the ground that the Respondent has failed to file an answer to the compliance specification.

On September 12, 2000, the Board issued a Decision and Order, directing the Respondent, Dong-A Daily North America, Inc., to make whole Yong Seok Kang for loss of earnings and other benefits resulting from his demotion, transfer, and discharge, all in violation of the Act.¹ On June 26, 2001, the United States Court of Appeals for the Ninth Circuit issued a judgment enforcing the Board's Order.

A controversy having arisen over the amount of backpay due Kang, on November 23, 2001, the Acting Regional Director for Region 31 issued a compliance specification and notice of hearing alleging the amount due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. The Regional Director attempted to serve the Respondent, by certified mail; but the Respondent did not accept service. The Regional Director successfully served a copy of the compliance specification on the Respondent's agent for service, R&S Agents, Inc., and on Kenneth A. Manning, the attorney who represents the Respondent's president, Suk S. Lee. Although properly served with a copy of the compliance specification, the Respondent failed to file an answer.²

By letters dated February 5, and February 21, 2002, counsel for the General Counsel advised the attorney for the Respondent's President and the Respondent's agent that no answer to the compliance specification had been received, and that, unless an appropriate answer was filed by March 1, 2002, summary judgment would be sought.³ The Respondent filed no answer.

On March 13, 2002, the General Counsel filed with the Board a Motion For Summary Judgment, with exhibits attached. On

March 15, 2002, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent again filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record in this case, the Board makes the following

Ruling on the Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause being shown for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the net backpay due Kang for the period June 1, 1999, through January 31, 2000, is as stated in the compliance specification and we will order payment by the Respondent of that amount to Kang, plus interest accrued on that amount to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, Dong-A Daily North America, Inc., Chicago, Illinois, its officers, agents, successors, and assigns, shall make whole Yong Seok Kang, by paying him \$24,036.45, plus interest and minus tax withholdings required by Federal and State laws.

Dated, Washington, D.C. June 27, 2002

Wilma B. Liebman, Member

William B. Cowen, Member

Michael J. Bartlett, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

¹ 332 NLRB No. 8.

² The compliance specification was returned to the Regional Office marked "Unclaimed" and "Return to Sender." The Respondent's failure or refusal to accept certified mail cannot serve to defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986).

³ By letter, dated February 11, 2002, Mr. Manning replied to the General Counsel's February 5 letter, stating that he represented Lee only as an individual and did not represent the Respondent. He further stated that the Respondent was "defunct" and that "Lee remains a Chapter 11 Debtor in Bankruptcy." It is well established that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. *Phoenix Co.*, 274 NLRB 995 (1985). Board proceedings fall within the exception to the automatic stay provisions for proceedings by a governmental unit to enforce its police or regulatory powers. See *id.*, and cases cited therein.